


Entered - 10-20-00 - sb
CL 00L0638 - ALEXIS HOLMES

00-*R*-1820

CLAIM OF: **ENDIA S. MITCHELL AND
GILGAMESH A. FARUKI**
Planetarian, Inc.
979 Greenwood Ave, NE
Atlanta, GA 30306

For damages alleged to have been sustained due to the denial of
Petitions for the use of off-site parking on May 5, 2000, at 1039
Greenwood Avenue, NE.

THIS ADVERSED REPORT IS APPROVED

BY: 
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0638

Date: 11/01/00

Claimant /Victim: ENDIA S. MITCHELL AND GILGAMESH A. FARUKI

BY: (ATTY:)

Address: Planetarian, Inc. 979 Greenwood Ave., NE Atlanta, GA 30306

Subrogation: Claim for Property loss \$ Not Stated Bodily Injury \$

Date of Notice: 10/20/00 Method: Written, proper X Improper

Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.)

Date of Occurrence 05/05/00 Place: 1039 Greenwood Avenue, NE

Department Department of Planning, Development and Neighborhood Conservation Division: Zoning Division

Employee involved Gloria Peters Disciplinary Action:

NATURE OF CLAIM: Claimants alleged that they suffered injury, loss and damages from the City when their Petitions for use of a certain off-site parking lot were denied. The City prevailed in the claimants' Appeal. Furthermore, the City is immune from liability as set forth in O.C.G.A. § 36-33-1.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral

Pictures Diagrams Reports: Police Dept Report Other X

Traffic citations issued: City Driver Claimant Driver

Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial

Improper Notice More than Six Months Other X Damages reasonable

City not involved Offer rejected Compromise settlement

Repair/replacement by Ins. Co. Repair/replacement by City Forces

Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - ALEXIS HOLMES

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01

Claims Manager:  Concur/date 11-02-00

Committee Action: Council Action

Certified- Return Receipt Requested

Holmes

10/23/00

Endia S. Mitchell
Gilgamesh A. Faruki
Planetarian, Inc.
979 Greenwood Ave. NE
Atlanta, GA 30306

October 17, 2000

ENTERED - 10-20-00 - SB
00L0638 - ALEXIS HOLMES

Law Department
City of Atlanta
Suite 4100
City Hall Tower
68 Mitchell Street, SW
Atlanta, GA 30303-0332

Re: Notice of Injury and Claim
For Redress Pursuant to
42 U.S.C. Section 1983
and O.C.G.A. Section 36-33-4

Dear Sir or Madam:

Notice is hereby given that the Petitioners have suffered injury, loss, and damages as a result of certain actions taken by the City of Atlanta, through its various agencies, in violation of the due process and equal protection rights accorded Petitioners by the State and Federal Constitutions. As further described hereinafter, the City of Atlanta, having denied Petitioners the use of certain off-site parking lot as being an "operational nightmare" as well as being legally deficient for the proposed use, has in or about May, 2000, allowed, nonetheless, another establishment to use the same; without regard even to the conditions the City of Atlanta had itself attached to this establishment's special exception permit for off-site parking. The petitioners believe that this governmental act by the City of Atlanta is oppressive, malicious, injurious, illegal, and it unambiguously violates Petitioners constitutional rights. Therefore, Petitioners are entitled to redress and compensation pursuant to 42 U.S.C. Section 1983 and O.C.G.A. Section 36-33-4.

FACTUAL BACKGROUND AND CAUSE OF GRIEVANCE

On or about May 8, 2000, the Zoning branch of the Bureau of Buildings of the City of Atlanta allowed Surin of Thailand and Harry and Sons, restaurants located respectively at 810 and 820 N. Highland Ave. NE, to relocate their off-site parking spaces to the parking lot at 1039 Greenwood Ave. NE, the use of which parking lot the City had previously denied to the Petitioners.

The City's Bureaus of Planning, Traffic, and Transportation, and its Board of Zoning Adjustments (BZA) denied on April 18, 1997 Petitioner's application for special exception numbered V-97-10 on the grounds that the parking lot proposed therein was legally deficient in several respects and that its use would tantamount to an "operational nightmare". The staff of the aforesaid Bureaus liberally and connivingly manipulated the facts of the matter to assist BZA to arrive at its predisposition to deny the application, which it did nary a question nor anything resembling a "findings of fact" the BZA was obliged to submit in its determinations under the City of Atlanta, Code of Ordinances. On the contrary, the BZA simply and conveniently agreed with the staff and the NPU-F positions which portrayed, respectively, that the proposed parking lot presented an "operational nightmare" and that it was not a legal facility to qualify as an off-site parking lot.

NPU-F, Neighborhood Planning Unit, is a City sponsored entity which yields substantial influence upon the workings of the aforesaid agencies despite the fact that at the time of Petitioners' application, the NPU-F was without any ordained authority to sway governmental functions, let alone conduct public hearing to recommend to the City whether an applicant should or should not be granted relief it sought. The Bureau of Planning and BZA required that all applicants for special permits, including Petitioners, must appear before the city wide Neighborhood Planning Units in order for them to qualify for a hearing before the BZA. Likewise, the staff reports recommending denial of Petitioners application were without authority since the application sought a special exception, not a variance.

CAUSE OF GRIEVANCE

On May 5, 2000, in response to Petitioners' numerous and ongoing inquiries, and its second Open Records request, Ms. Gloria Peters of the Zoning Section, Bureau of Buildings, City of Atlanta, informed the Petitioners that her Department had allowed Surin of Thailand and Harry and Sons to relocate their off-site parking spaces to the parking lot at 1039 Greenwood Ave, NE; based on the fact that these establishments possessed previously granted Special Exception Permits (V-91-103 and V-92-155) for off-site parking. Ms. Peters also informed the Petitioners that they would be allowed to review and copy documents and information at the Bureau on the morning of May 8, 2000. Petitioner Faruki did so and Ms. Peters reiterated the preceding determination made by her Department.

Obviously, the Petitioners felt hurt and mistreated by City's new and very positive approach to the viability of the parking lot it had viewed differently when the Petitioners wanted to use it as their off-site parking spaces. What was then bad for the goose, has now been deemed good for the gander. With a callous twist, the City of Atlanta, which has vilified Petitioners use of the parking lot as an "operational nightmare" and which also undermined its legality, has determined and sanctioned the same parking lot to be fit for use (provided the user is someone other than the Petitioners). Please note, that this happened despite the fact that the Special Exception Permits previously granted to Surin of Thailand and Harry and Sons contain specific conditions that both on-site and off-site parking spaces shall meet "current" parking standards pursuant to the Zoning ordinances of the City of Atlanta.

STATEMENT OF VIOLATION, INJURY, AND DAMAGES

Grant of Special exception Permit the Petitioners sought in 1997 would have enabled them to operate their restaurant, Café Planetarian, on a year round basis at full capacity. The restaurant was highly acclaimed and popular to have succeeded in both obtaining higher revenues and in attracting higher bids in the event Petitioners decided to sell it. The whole purpose of special permits is to enable applicants to overcome shortcomings of the kind Petitioners experienced. There would be no special exception permits if one were held to live with the initial or original plans.

After denial of their application for special exception, the Petitioners tried in vain different management approaches and cuisines to overcome restaurant's shortcoming of not having enough parking to enclose the premises during the winter months. The parking solution it had proposed in its application would have benefited the public year round even though the restaurant was not required to have additional parking spaces in the warm months.

Due to the aforesaid shortcoming, the Petitioners were unable to attract a bonafide purchaser for the restaurant. The Petitioners have recently transferred the restaurant business to their chef-manager for ten dollars.

Had the City granted the permit they sought, the Petitioner would have either continued operation of the restaurant with its full potential, or would have sold it for in excess of five-hundred thousand dollars, based on comparative market value in the area.

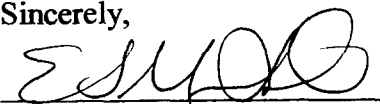
Petitioner Faruki also believes that his national origin may have excited the powers to be to reject with impunity their otherwise routine application for special exception.

Based on the foregoing, the City of Atlanta is liable to the Petitioners for the injury, loss, and damages they suffered as a consequence of the wanton governmental action. By denying Petitioners use of the aforesaid parking lot and by allowing Surin, et al, the use

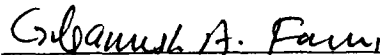
of the same, the City of Atlanta has violated Petitioners due process and equal protection rights. Therefore, Petitioners intend to seek all remedies embodied in 42 U.S.C. 1983 and O.C.G.A. 36-33-4.

Please be advised that Petitioners are submitting this claim within six months from receipt of actual knowledge as prescribed in O.C.G.A. Section 36-33-5. Pursuant to O.C.G.A. Section 36-33-4, you are required to respond in writing within 30 days from the date of this notice.

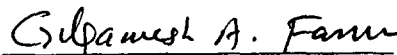
Sincerely,



Endia S. Mitchell



Gilgamesh A. Faruki



Planetarian, Inc.

10/20/02
C: Claims ✓
David Blum

00- R -1820